

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**MLS Legacy, LLLP and Clinton Vos**  
  
**Jasper County, Iowa**  
**AFO #62098**

ADMINISTRATIVE CONSENT ORDER  
NO. 2015-AFO-07

TO: Marla Vos, Registered Agent  
MLS Legacy, LLLP  
507 West 36<sup>th</sup> Street South  
Newton, Iowa 50208

Clinton Vos  
9401 Highway G14 South  
Reasnor, Iowa 50232

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and MLS Legacy, LLLP (MLS Legacy) and Clinton Vos for the purpose of resolving water quality violations resulting from a manure discharge from the Mid-Iowa Equipment North (Mid-Iowa Equipment) facility to an unnamed tributary of Alloway Creek in Jasper County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bill Gibbons, Field Office 5  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 200  
Windsor Heights, Iowa 50324  
Phone: 515/725-0335

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/725-9572

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: MLS LEGACY, LLLP AND CLINTON VOS

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

**III. STATEMENT OF FACTS**

1. Mid-Iowa Equipment is an animal feeding operation located at 9476 Hwy 14 North, Laurel, Iowa (NW ¼ of the NW ¼ of Section 14, Mariposa Township, Jasper County, Iowa). The facility is a confinement operation with 4,000 head of finishing swine. There are four confinement buildings with formed concrete below building manure storage pits. The Jasper County Assessor lists MLS Legacy as the owner of the property and the confinement buildings. Mid-Iowa Equipment's manure management plan lists Clinton Vos as the owner and Mr. Vos signs the manure management plan as the owner.

2. On August 27, 2014, DNR Field Office 5 received a complaint regarding a fish kill in an unnamed tributary of Alloway Creek in Jasper County south of Laurel, Iowa. The fish were discovered by the complainant at a crossing of the creek on property south of Highway 14 where it goes west to east before going back north to Laurel. The complainant was removing some debris from the creek when he noted the dead fish. The complainant stated the water had a manure odor.

3. On August 27, 2014, Bill Gibbons and Jeff Theobald, DNR Field Office 5 environmental specialists, travelled to the location described in the complaint and began the investigation. They noted the Mid-Iowa Equipment facility upstream of the area where the fish kill was reported. The field office personnel looked at two bridges over Highway 14 south and west of the facility. At the bridge south of the facility there were two small dead fish that appeared to have been decomposing for a few days. The water was clear and did not have an odor. The field test indicated an ammonia concentration of 1.2 mg/L and a dissolved oxygen concentration of 6.0 mg/L. The field office personnel continued downstream to the bridge near the complainant's property. The field office personnel noted approximately 20 small dead fish that appeared to have been decomposing for an extended period of time. The field test indicated an ammonia concentration of 1.92 mg/L and a dissolved oxygen concentration of 6.0 mg/L.

4. Mr. Gibbons and Mr. Theobald travelled to the Mid-Iowa Equipment facility. They noted four confinement buildings in a row going north to south with

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: MLS LEGACY, LLLP AND CLINTON VOS

the buildings oriented length-wise in an east to west direction. The field office personnel noted manure coming out of the west end of the third building from the north. The manure was coming through the concrete wall above the ground surface. The manure was coming out at a slow trickle to the ground, pooling around the building next to it to the south and then flowing into an adjacent bean field in a southeast direction. It appeared the leak had been going on for some time because there was a burned up area in the bean field showing the trail of manure running toward the unnamed tributary of Alloway Creek that ran north to south along the east side of the facility then curving east to west south of the buildings. Manure was also observed pooling in the field. At the time of the investigation there was little or no manure going in the creek however the trail of dead soybeans and vegetation provided evidence that manure had made it to the creek which likely happened during a recent precipitation event.

5. Mr. Gibbons contacted Clinton Vos by telephone to inform him that manure was leaking from one of the facility's buildings with the manure pooling around the buildings, in the field and making its way to the creek. Mr. Gibbons also spoke to Clinton Vos' son, Curt. Curt Vos stated he just finished repairing the leak in the building and pushed dirt around it. He stated he also constructed a dike to contain the spilled manure around the southernmost building. Curt Vos and the field office personnel agreed to meet the following morning to discuss the discharge and the clean-up of the site.

6. On August 28, 2014, the field office personnel returned to the site. At the time of the visit it was raining. Before meeting with Curt Vos, the field office personnel went to the bridge crossing south of the facility and noted more dead fish in the creek than they had noted in the previous day. The field office personnel walked upstream approximately 100 yards and continued to see dead fish in the creek. The field test from the crossing indicated the ammonia concentration was 1.92 mg/L. The field office personnel continued to the facility where they met with Curt Vos. Curt Vos showed the field office personnel the fan in the pit end of the wall that had become loose and allowed manure to leak out. The fan had been secured back in the pit wall and dirt had been piled around it as well. The leak appeared to have been stopped. Curt Vos stated that the facility caretaker contacted his father Clinton Vos the previous week to tell him about the loose fan. Clinton Vos thought the caretaker had fixed the fan and was unaware of the leak until the DNR contacted him. Curt Vos showed the field office personnel what had been done the previous day to stop the manure release and to clean up the site. Curt Vos incorporated some of the manure that had pooled around the south building into a grassy area between the buildings and then put fresh dirt on top to soak up the manure. Some liquid manure still remained around the pit wall of the south building. Curt Vos piled up soil at the east end of the south building where the manure was going into the field. There was still liquid manure pooled in the field below the buildings. Curt Vos agreed to construct a berm in the field to prevent manure from going into the creek. The field office personnel informed Curt Vos that when conditions allowed the liquid

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: MLS LEGACY, LLLP AND CLINTON VOS

manure may need to be removed and land applied. Curt Vos explained to the field office personnel that the facility had recently installed a new watering system and he believed the new system was increasing the water usage, increasing the amount of liquid manure being produced. This was causing the pits to fill up with liquid manure more quickly. The same system was installed at another facility owned by the Vos family in Jasper County, known as Mid-Iowa Equipment (South).

7. The field office personnel conducted field tests and collected laboratory samples of the impacted waters. The field test conducted upstream of where the manure entered the creek indicated an ammonia concentration of 0.48 mg/L and the field test conducted downstream of where the manure entered the creek indicated an ammonia concentration of >3.0 mg/L. The laboratory sample results from the upstream location indicated an E.Coli concentration of 1,900 MPN/100mL, an ammonia concentration of 0.060 mg/L and a CBOD concentration of <2 mg/L. The laboratory sample results from the downstream location indicated an E.Coli concentration of 2,100 MPN/100mL, an ammonia concentration of 1.6 mg/L and a CBOD concentration of 18 mg/L. Prior to meeting with Curt Vos, the field office personnel went to the creek crossing downstream of the Mid-Iowa Equipment facility where dead fish were observed the previous day. The field office personnel found more dead fish in the creek than they had seen the previous day. The field office personnel walked approximately 100 yards upstream and continued to see dead fish in the creek. The field office personnel conducted a field test at the crossing and found the ammonia concentration to be the same as the previous day. The laboratory sample results from this location indicated an E.Coli concentration of 140 MPN/100mL, an ammonia concentration of 0.70 mg/L, and a CBOD concentration of 3 mg/L. They also checked the area further downstream where the unnamed tributary met Alloway Creek. No dead fish were observed in this area.

8. On August 28, 2014, DNR Fisheries personnel began their fish kill assessment of the impacted areas of the unnamed tributary of Alloway Creek. The fish kill investigation was conducted by Andy Otting and Jake Slings, DNR Fisheries Bureau. The total fish kill extended 1.58 miles. Based on the small area of the impacted stream and the low density of dead fish within the stream, the Fisheries personnel conducted a census (complete enumeration) of the dead fish within the impacted stream area.

9. Fish restitution valuation followed procedures provided by American Fisheries Society Special Publication 30 and pursuant to 571 IAC chapter 113. The fish kill assessment determined that 48 fish were killed, valued at \$4.32. The Fisheries Bureau investigative costs were \$343.96. The total fish value and investigative costs total \$348.28.

10. On September 2, 2014, Mr. Gibbons spoke to Curt Vos regarding the cleanup of the affected soil and remaining liquid manure on site. Mr. Vos asked if

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: MLS LEGACY, LLLP AND CLINTON VOS

the cleanup could wait until after harvest. Mr. Gibbons stated as long as the manure was contained the cleanup could be delayed until after harvest.

11. On September 4, 2014, DNR issued a Notice of Violation letter to Clinton Vos for the violations discovered during DNR Field Office 5's August 2014 investigation. The letter required that the facility make permanent repairs to the leaking fan and prevent any further releases. The letter also required that all manure that had been released to be properly land applied. The letter indicated the violations were being referred for further enforcement. On October 6, 2014, Curt Vos contacted Mr. Gibbons and stated that the soybean harvest had started and they would begin removing the affected soil and land-apply it to the fields within the next two weeks.

12. On October 27, 2014, Mr. Gibbons and Mr. Theobald conducted an Animal Feeding Operation Compliance Inspection. They observed that the fan that had leaked was lying on the ground with a plastic bucket over the end of the ventilation tube and dirt piled around it. All of the end-wall pit fans had dirt piled around them and over them; some of the other fans had been removed with dirt piled over the ventilation tube opening in the end wall. It appeared none of the end wall fans were being used. Curt Vos stated he believed the dirt would be a sufficient barrier to prevent manure from coming out the ventilation tubes that are below the slats in which the end wall fans were inserted.

13. On November 18, 2014, Curt Vos submitted a letter detailing the steps being taken to prevent future discharges from the facility. The letter indicated that the 10 inch round holes (2 on each end wall of each building) would be permanently closed because the end wall fans would no longer be used. The PVC pipes and fans would be removed and the holes would be filled with concrete and then dirt piled back to its original level around the outside of the building. The letter stated Mr. Vos would notify the field office when the removal process was completed. The letter also stated that the berms used for temporary containment had been removed and its contents have been spread on the surrounding field with a dry spreader and incorporated with a disc.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code sections 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 5's investigation in August 2014, it was determined that manure from the Mid-Iowa

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: MLS LEGACY, LLLP AND CLINTON VOS

Equipment facility was discharged into an unnamed tributary. The above-mentioned facts indicate violations of these provisions.

3. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. During DNR Field Office 5's investigations in August 2014, it was determined that manure from the Mid-Iowa Equipment facility had been discharged into an unnamed tributary. The above facts indicate violations of this provision.

4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated levels of pollutants in the unnamed tributary. Additionally, dead fish were documented. The above mentioned facts indicate violations of the general water quality criteria.

5. 567 IAC 65.2(9) requires that a person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release to notify the DNR of the occurrence of the release as soon as possible but no later than six hours after the onset or discovery of the release. The Mid-Iowa Equipment facility caretaker notified Clinton Vos about the release the week before the field office investigated the complaint. The release was not reported to the DNR. The above mentioned facts indicate a violation of this provision.

6. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of the state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 13. 571 IAC 13 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge from the Mid-Iowa Equipment facility.

7. The DNR has determined that there is no likelihood that the violations identified in Paragraphs 2-6, Section IV. Conclusions of Law will occur again if MLS Legacy and Clinton Vos implement the requirements set forth in Paragraph 1, Section V. Order of this administrative consent order.

**V. ORDER**

THEREFORE, the DNR orders and MLS Legacy and Clinton Vos agree to do the following:

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: MLS LEGACY, LLLP AND CLINTON VOS

1. MLS Legacy and Clinton Vos shall prevent further discharges of manure from the Mid-Iowa Equipment facility to a water of the state;
2. MLS Legacy and Clinton Vos shall retain all manure at the Mid-Iowa Equipment facility between periods of manure application. The manure level in the pits at the Mid-Iowa Equipment facility as well as the Mid-Iowa Equipment (South) facility shall be measured and recorded weekly. Any pit with manure within one foot or less of the top must be pumped down. A walk around inspection of the buildings must be conducted weekly to check all building openings. A copy of the weekly manure level and walk around inspections must be maintained on site and available for inspection;
3. MLS Legacy and Clinton Vos shall complete the fan removal and closure as detailed in its November 18, 2014 letter (see Section III. Statement of Facts, Paragraph 13 of this administrative consent order) by May 1, 2015. Proof of the removal and proper closure shall be submitted to DNR Field Office 5 June 1, 2015;
4. MLS Legacy and Clinton Vos shall develop a Standard Operating Procedure for all its employees and caretakers detailing the steps to be taken to ensure that DNR is notified of future releases within 6 hours of discovery. The Standard Operating Procedure shall be submitted to DNR Field Office 5 within 30 days of the date the Director signs this administrative consent order. The Standard Operating Procedure shall be reviewed withal employees and caretakers on a yearly basis. MLS Legacy and Clinton Vos shall maintain a record of the employee and caretaker review of the Standard Operating Procedure;
5. MLS Legacy and Clinton Vos shall pay fish restitution in the amount of \$4.32, Fisheries Bureau investigative costs in the amount of \$343.96, for a total restitution and investigative costs of \$348.28 within 30 days of the date the Director signs this administrative consent order; and
6. MLS Legacy and Clinton Vos shall pay an administrative penalty in the amount of \$7,850.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: MLS LEGACY, LLLP AND CLINTON VOS

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$7,850.00. MLS Legacy and Clinton Vos are jointly and severally liable for the payment of the penalty. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” MLS Legacy and Clinton Vos delayed the land application of the liquid manure from the leaking pits from late August 2014-early October 2014. There was no crop fields available for land application and the manure would have had to be applied to fields not farmed by MLS Legacy and Clinton Vos thus losing the value of the manure fertilizer and having to use commercial fertilizer. Additionally, MLS Legacy and Clinton Vos delayed the costs for proper training of employees and caretakers for notifying the DNR of a manure release. Based on the above facts, an economic benefit of \$3,100.00 is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 5 documented a manure discharge that impacted an unnamed tributary. Additionally, MLS Legacy and Clinton Vos failed to notify the DNR of the release in a timely manner; thus allowing the manure release to continue for an extended period of time. These violations threaten the integrity of the regulatory program because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, \$2,750.00 is assessed for this factor.

Culpability –MLS Legacy and Clinton Vos have a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that their conduct is subject to DNR’s rules. Additionally, MLS Legacy and Clinton Vos failed to notify the DNR of the release in a timely manner; thus allowing the manure release to continue for an extended period of time. Therefore, \$2,000.00 is assessed for this factor.



IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: MLS LEGACY, LLLP AND CLINTON VOS

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of MLS Legacy and Clinton Vos. For that reason MLS Legacy and Clinton Vos waive the right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Chuck Gipp  
CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 30<sup>th</sup> day of  
March, 2015.

Mark Vos  
MLS LEGACY, LLLP

Dated this 23 day of  
March, 2015.

Clinton Vos  
CLINTON VOS

Dated this 23 day of  
March, 2015.

Facility #62098; Kelli Book, DNR Field Office 5, EPA, VIII.D.1.a, VIII.D.3.a

**RECEIVED**

MAR 24 2015

IDNR AIR QUALITY